

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

NO: 5:07-M-1260

UNITED STATES OF AMERICA,

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Plaintiff,

)

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v.

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ORDER

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BARRY LEWIS

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Defendant.

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On May 7, 2007, a Criminal Complaint was issued against the Defendant, BARRY LEWIS, that charges him with giving false statements as to the acquisition of a firearm from a federal firearms licensee, in violation of 18 U.S.C. §922(a)(6). On May 8, 2007, following a motion by the government, this Court ordered that the Defendant be evaluated by at least one qualified psychologist or psychiatrist to determine his competency to proceed with his arraignment and trial, pursuant to 18 U.S.C. §§4142(a) and (b), and 4242(a).

The Court has received a report from Dr. Elissa R. Miller, forensic psychologist at Metropolitan Correctional Center, New York, NY, detailing the results of the court ordered evaluation, and rendering the opinion that the Defendant currently suffers from a Mental Disease, specifically, Bipolar I Disorder, Most Recent Episode Manic. In regards to his competency to stand trial, Dr. Miller concluded that the Defendant possesses a factual but not rational understanding of

the proceedings against him, does not have the capacity to assist legal counsel in his defense, and cannot rationally make decisions regarding legal strategy at this time; therefore, the Defendant is not competent to stand trial.

On August 29, 2007, this matter came before this Court for a competency hearing. The parties stipulated to the findings contained in the forensic report and concurred in the psychologist's opinion. The government moved the Court to commit the Defendant to the custody of the Attorney General, pursuant to 18 U.S.C. §4241(d).

There being no objection from the Defendant and good cause being shown, this Court adopts the findings and opinions of Dr. Elissa R. Miller, and finds by a preponderance of the evidence that the defendant is presently suffering from a Mental Disease rendering him mentally incompetent to the extent he is unable to understand the nature and consequences against him or to assist properly in his defense.

IT IS THEREFORE ORDERED that Defendant, Barry Lewis, is committed to the custody of the Attorney General who shall hospitalize him for treatment in Metropolitan Correctional Center, New York, NY, or in such other suitable facility:

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and

(2) for an additional reasonable period of time until--

- A. his mental condition is so improved that trial may proceed, if the Court finds that there is a substantial probability that within such additional period of time, he will attain the capacity to permit the trial to proceed; or
- B. the pending charges against him are disposed of according to law;

whichever is earlier.

If at the end of the time period specified, it is determined that the Defendant's mental condition has not so improved as to permit the trial to proceed, the Defendant shall be subject to the provisions of 18 U.S.C. §§4246 and 4248.

The United States Marshal's Service is ORDERED to transport Barry Lewis, to Metropolitan Correctional Center, New York, NY or such other suitable facility as may be designated, by the most expeditious means of travel.

DONE AND ORDERED in Chambers at Raleigh, North Carolina this 29th day of August, 2007.

A handwritten signature in black ink, appearing to read "William A. Webb", is written over a horizontal line.

William A. Webb
U.S. Magistrate Judge